BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking R.08-08-009

COMMENTS OF THE GREEN POWER INSTITUTE ON ASSIGNED COMMISSIONER'S RULING

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Introduction

Pursuant to the February 3, 2009, *Assigned Commissioner's Ruling Regarding Potential Renewables Portfolio Standard Development in Imperial Valley and Evaluation of Renewable Procurement Contracts*, as modified by the February 9, 2009, *Administrative Law Judge's Ruling Extending Time for Comments and Reply Comments*, the Green Power Institute (GPI) hereby submits these *Comments of the Green Power Institute on Assigned Commissioner's Ruling*, in Proceeding R-08-08-009, **Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program**. We address the ACR's three proposals for renewables development in the Imperial Valley, the four issues discussed in the ACR pertaining to renewables development generally in California (the proposals and issues are discussed in Attachment A to the ACR), and the staff proposal on project viability evaluation that is Attachment B to the ACR.

Proposals to Support the Development of Renewables in the Imperial Valley

Now that the Commission has made a major commitment to bring new transmission access to the renewables-rich Imperial Valley in Southern California (Decision D.08-12-058, Sunrise Power Link), it has a strong interest in seeing the successful development of renewable generating projects in the region that will interconnect to and utilize the new transmission line. The ACR shows a willingness to consider applying special incentives to proposals for renewables projects from the target area, including requiring each of the three large IOUs to hold a bidder's conference in the Imperial Valley as part of the 2009 RPS solicitation cycle, instituting special Commission monitoring of proposals for projects from the target-region, and a consideration of Commission-initiated remedial activity in

the 2010 solicitations if insufficient contracting success is observed in the 2009 round of RPS solicitations.

We support the Commission's directive to have the IOUs hold bidders conferences in the Imperial Valley prior to the 2009 round of RPS solicitations, although in the case of PG&E the value of doing so is questionable due to geographical considerations. We also support the proposal to have the Commission's Energy Division monitor the treatment of proposals from projects located in the Imperial Valley. Indeed, such monitoring could be effectively extended to all regions of the state as long as the utilities continue to be well behind in their overall renewable procurement obligations, which we count in terms of energy deliveries, not signed contracts for new generating projects.

We also support the ACR's proposal for the imposition of remedial measures for the 2010 solicitations if there are no, or an inadequate quantity of, Imperial Valley projects resulting from the 2009 round of RPS solicitations. We particularly support the first and third measures proposed on page 3 of Attachment A to the ACR, requiring all Imperial Valley projects to be shortlisted, and requiring each utility, or at least SCE and SDG&E, to conduct special Imperial Valley solicitations. We are indifferent to the proposal to require the utilities to include a bid metric in the least-cost / best-fit process, due to the fact that we do not have sufficient knowledge about how the least-cost / best-fit process works today, or how including a new metric would affect the process.

Issues Regarding Renewables Development Generally in California

The ACR discusses four issues regarding the conduct of project viability assessment (PV) for renewables projects that are bid into utility RPS solicitations, and how to use such assessments in the overall utility-portfolio development process. While we recognize the importance of performing PV assessments, we believe that the ACR's approach to using assessments of project viability in the regulatory process misses the mark in some important ways. The ACR suggests that PV assessment should become a component of the overall project-selection process for RPS solicitations. For example, it proposes that

projects that receive a PV score below a minimum threshold should be ineligible for being short-listed or to receive PPAs, while projects that receive scores in the mid-range should be afforded less flexibility in subsequent contract renegotiations, should developers encounter difficulties in the process of bringing their proposed projects to an operational status. In our opinion, limiting the Commission's flexibility in dealing with projects that receive lower PV scores in the initial assessment process, when in fact such projects may require more flexibility, not less, in order to achieve operational status, if indeed the assessments are accurate in the first place, has the potential to produce a self-fulfilling prophecy in which initially lower-scored projects are less likely to be able to overcome development complications that might arise.

According to the utility representatives participating in the February 17, 2009, workshop on the PV staff proposal, project viability currently is not a component of the project-selection process. In the existing least-cost / best-fit bid-ranking process, cost is by far the most important bid-selection criterion, with factors like a proposed project's load shape, and the shape of the utility's net-short position also playing a role, albeit in ways that are largely opaque to the public. In the opinion of the GPI, PV assessment should not be used as a basis for selecting project winners and losers in the RPS solicitations. PV assessment can and should play an important role in estimating the expected magnitude of a utility's ultimate portfolio of operating RPS projects, given their portfolio of contracts for projects under development. In other words, PV assessment can be used to convert the number of annual megawatt hours in a utility's portfolio of contracts for projects under development, into an expected number of annual megawatt hours of procurement that the utility can reasonably expect to derive from a given portfolio of contracts for new generating projects.

In the discussion on page 5 in Attachment A to the ACR on seller non-performance, it states: "If an IOU uses seller non-performance as an excuse, however, that IOU must also show that it took all reasonable actions to meet its RPS obligations." We believe that the proper way for a utility to demonstrate that it took all reasonable actions is to calculate the

probabilistically-determined expected annual renewable-energy generation that will be delivered from their portfolio of contracts for projects under development, using the approach we have discussed above.

Issue 3 in Attachment A discusses possible rule changes to ensure viable projects are selected for the utilities' short lists. In our opinion, as long as the realistic probability of fulfillment for a given project is applied in the estimation of its expected output, there is no reason that a project with limited prospects of fulfillment should not be proffered a contract if other terms and conditions are attractive. For example, a contract with a project deploying an emerging technology might be assessed a probability of fulfillment of 25 percent. In this case, a 100 MWh per year project should be assigned an expected contribution to a utility's future renewable energy procurement of 25 MWh per year. Opportunity projects facing significant hurdles should not be prohibited altogether. The key is to properly discount their expected future contribution to an IOU's renewable energy procurement portfolio.

Issue 4 in Attachment A discusses possible rule changes regarding project milestones, credit, collateral, and deposits. The GPI has long been concerned that this category of what is in reality unproductive capital demands on developers is already too stringent, particularly in the context of the current state of the economy. We recognize the necessity of the various forms of security, but urge the Commission to ensure that they are kept under control. Freeing up developer capital might allow projects more leeway in dealing with the inevitable challenges of project development.

We note that the proposed methodology for PV assessment and application lacks what we believe to be one of the most important criteria that is predictive of the prospects for successful project development: A consideration of whether the bid price is sufficient for the technology that is being bid to generate sufficient revenues to cover the costs of project development and operations, assuming operations of a typical project, under a long-term regime of good engineering practices. Projects with an insufficient bid price for the type and scale of technology they are proposing to deploy are unlikely to pass muster

during financial due diligence, and if they do obtain financing, are unlikely to be able to perform up to specifications over the lifetime of the power-purchase contract. Yet project financial viability is not mentioned at all in the discussion of PV assessment in the ACR.

Indeed, it should be noted that there is often an inverse relationship between the cost of a proposed development project, and the realistically-calculated viability score for that project. Projects that are bid with prices that do not include a margin for error can be expected to have lower costs than similar projects that do have a margin for error built into the bid price, but projects without a margin for error are likely to have a lower PV outlook due to their lack of ability to overcome unexpected development-phase setbacks, assuming our suggested criterion for financial viability is added to the calculator. In fact, as some parties noted during the recent workshop, given the current, largely price-driven competitive solicitation process, some developers purposely under-bid their projects into the utility solicitations in order to make it onto the short list, with the expectation that later, after a contract is awarded, they will be able to come back to the utility and the Commission with contract amendments for prices that are in fact adequate to support long-term operations of their generating facilities. This practice tends to leave developers who offer more realistic proposals out of the running, a perverse outcome to say the least.

In the opinion of the GPI, PV assessment should be used primarily to assign probabilities of successful development to projects that are bid and/or obtain PPAs in utility solicitations. Discounting the expected output of these projects by their probabilities of successful development provides the best assessment of the magnitude of a utility's expected future procurement of renewable energy, given their portfolio of contracts for projects under development. Because of the inexactness of PV assessment, and the fact that a project's assessed PV score can change over time as circumstances change, we make the following recommendation: We believe that all projects initially should be assigned a maximum probability of development success of no more than 70 percent, based on industry-average experience. The PV assessment can then be used to lower the predicted probability of success, or in some cases increase it, based on the individual

circumstances of a particular project. We recommend adjusting the probabilities in increments of multiples of five percent up or down, given the uncertainties involved in the assessment process.

Staff Proposal on Project Viability Assessment

The staff proposal on project-viability assessment is a work in progress that needs further development before it is ready for routine application. In particular, if one of the motivating factors behind the calculator's creation is to increase the transparency of the RPS-solicitation process, then it will be necessary to define the scoring criteria with a great deal more detail and specification, in order to reduce ambiguity and allow all parties to be able to adequately anticipate the scores that projects are likely to achieve. For example, the first category in the calculator is: "Total Years of Development Experience." Does this pertain to the company that is making the proposal, or to the personnel in the company making the proposal? If the latter, does it pertain only to the principals of the company, or more generally to the company's overall staff? Similarly, three of the categories ask for project-financing experience, facility-ownership experience, and facility-operations experience. Each of these criteria is to be scored with a binary one for yes, or zero for no. However, there is no indication of how much experience in each of these categories is sufficient to earn a score of one. Is having financed one previous project equivalent to having financed ten? Is working entirely through the process of financing a project, even if unsuccessful, equivalent to having successfully financed a project? Finally, we do not know what is meant by the last criterion in the Project Viability Category, "Seller Concentration in RFO."

The second category of criteria in the calculator is "Technical Viability." Our first impression on reading the ACR was that insufficient weight was being given to this very important category. However, during the recent workshop staff stated that the calculator would only be used for projects using technologies that have already achieved commercial-development status. If that is the case, why include the criterion at all, as by definition all projects being assessed would be scored with the identical score of two.

The final category of criteria in the PV calculator is Project Viability. The scoring criteria in this category focus on several specific steps in the project-development process, but in the opinion of the GPI, leaves out what may be the single most important predictor of ultimate project viability: whether the project's bid price will provide revenues that are sufficient to support both initial project development, and project operations over the lifetime of the proposed contract. As it stands, the scoring in this category will provide more of an indication of how far the proposed project has progressed through the development process than of its ultimate chances for successful development, startup and ongoing operations. If a score for revenue sufficiency is added to the calculator, it will be important to ensure that it is made both technology and size-specific to the proposed project.

In addition to improving the calculator by adding detail and specificity to the criteria for scoring each category of PV prediction, we believe that the Commission needs to give serious thought to the balance and relative significance of the various criteria. For example, as it currently stands, the calculator currently is premised on an importance ratio among the three categories of Developer Experience, Technical Viability, and Project Viability of 6 : 2 : 9. However, there is no discussion or rationale for why these ratios are correct or predictive of ultimate project viability. Should new categories be added to or removed from the calculator, for example based on Comments from the parties, these ratios will change. The Commission needs to consider carefully whether the current ratios are sensible, and if they change as a result of the addition or subtraction of categories, whether the new ratios are more or less sensible than the current ratios. Declining to consider the relative importance of the various categories included in the calculator by weighting them all equally weakens the entire enterprise.

One of the provisions of the staff proposal would link the amount of development security that a project must post to its PV assessment score (see the graph on page 3 of Attachment B to the ACR). We oppose this provision. Similar to the proposal to limit Commission flexibility in dealing with projects that receive relatively low PV scores, which

has the perverse effect of reducing their ultimate viability further relative to higher-scoring projects, asking projects with relatively low PV scores to post higher security payments only further handicaps the chances of these projects to successfully complete the project development process, by unproductively tying up scarce developer resources.

Finally, the staff proposal suggests that the Commission could use PV scores in determining the reasonableness of a utility's request for avoiding penalties due to failure to meet their procurement targets after the three-year period for flexible-compliance adjustments expires, particularly in the area of judging the contribution of seller non-performance to utility under-procurement, and showings of other good cause. We believe that PV assessment could be a useful tool in this area, but only if it is used to estimate the probabilities of project fulfillment for each contract in an LSE's portfolio in order to translate the magnitude of a utility's portfolio of contracts for projects under development into the expected size of a utility's ultimate operating procurement portfolio, as discussed previously in these Comments. This would allow the Commission to determine whether the under-procuring utilities have in fact contracted for a sufficient volume of renewable generating capacity in order to provide their target procurement needs on a probabilistic, expected-value basis. Using PV assessment for flexible compliance in the way that is suggested in the staff proposal, in which there is no discounting of expected output for category B or C projects, could encourage utilities to avoid sufficient over-contracting in order to meet their obligations for renewable-energy procurement.

Dated February 27, 2009, at Berkeley, California.
Respectfully Submitted,

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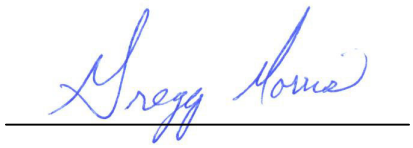
PROOF OF SERVICE

I hereby certify that on February 27, 2009, in Berkeley, CA, I have served a copy COMMENTS OF THE GREEN POWER INSTITUTE ON ASSIGNED COMMISSIONER'S RULING, upon all parties listed on the Service List for this proceeding, R-08-08-009. All parties have been served by email or first class mail, in accordance with Commission Rules.



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